

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

**DONALD JACK WEBB,**

Plaintiff,

v.

**JANE STANDIFIRD, et al.,**

Defendants.

**No. CIV 09-073-RAW-SPS**

**OPINION AND ORDER**

The court directed plaintiff to show cause for his failure to serve Defendant Dennis Cotner within 120 days of filing this complaint [Docket #31], and plaintiff has filed two responses to the order [Docket #32 and #33]. He, however, apparently misunderstood the show cause order and his responsibilities under Fed. R. Civ. P. 4(m), because he asserts “[t]he issue before this court is whether or not the dismissal of Mr. Cotner as a defendant is acceptable to the Plaintiff” [Docket #32 at 1]. To the contrary, the issue before the court is whether plaintiff has shown good cause for his failure to properly serve Mr. Cotner.

Plaintiff alleges it is his understanding that Cotner refused service, because Cotner no longer is the acting DOC Medical Director, or because Cotner no longer works for DOC. Plaintiff argues that even if Defendant Cotner no longer is the acting Medical Director of DOC, Cotner still is culpable in his individual capacity, or the “official position” should be held liable. Plaintiff is missing the point. Mr. Cotner’s liability can be assessed only if Cotner is properly served with this lawsuit.


Plaintiff also complains that the response to his attempted service of Defendant Cotner

was simply a typewritten statement, not on DOC letterhead, that read, "Mr. Dennis Cotner does not work for the Oklahoma Department of Corrections" [Docket #33 at 4]. Plaintiff contends this response was an attempt by DOC to "play games" with his life, and the fact that the response was not an official DOC document demonstrates it was an attempt by DOC "TO DRAG THIS PROCESS OUT NEEDLESSLY WITH GREAT COST TO A STATE THAT IS IN DEBT!" [Docket #33 at 2].

Plaintiff paid the filing fee for this case [Docket #4], so he was responsible for locating and serving all defendants, in accordance with the Federal Rules of Civil Procedure. Apart from mailing the complaint to DOC, there is nothing in the record to suggest plaintiff has made any attempts to locate and serve Defendant Cotner. The court, therefore, finds plaintiff has failed to show good cause for his failure to serve Defendant Cotner.

**ACCORDINGLY**, Defendant Cotner is **DISMISSED WITHOUT PREJUDICE** from this action for plaintiff's failure to serve Cotner within 120 days of filing the complaint, pursuant to Fed. R. Civ. P. 4(m).

**IT IS SO ORDERED** this 21<sup>st</sup> day of December 2009.



**RONALD A. WHITE**  
**UNITED STATES DISTRICT JUDGE**